

Marc S. Strecker (SBN: 140644)  
marc.strecker@sbcglobal.net  
STRECKER LAW OFFICES  
2600 Michelson Drive, Suite 1700  
Irvine, California 92612  
Telephone: (949) 852-3600  
Facsimile: (949) 861-9696

Attorneys for Plaintiffs  
Churee Haley and Rojelio Serrano

Frank C. Rothrock (SBN: 54452)  
frothrock@shb.com  
Darolyn Y. Hamada (SBN: 192334)  
dhamada@shb.com  
Brian P. Ziska (SBN: 272043)  
bziska@shb.com  
SHOOK, HARDY & BACON L.L.P.  
5 Park Plaza, Suite 1600  
Irvine, California 92614  
Telephone: (949) 475-1500  
Facsimile: (949) 475-0016

Attorneys for Defendant Pfizer Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CHUREE HALEY, an individual and  
ROJELIO SERRANO, and individual,  
  
Plaintiffs,

vs.

BAYER HEALTHCARE  
PHARMACEUTICALS, INC., a  
Delaware corporation; PFIZER, INC., a  
Delaware corporation; and DOES 1-200,  
inclusive,  
  
Defendants.

Case No. 8:16-cv-00546-JLS-E

Judge: Hon. Josephine L. Staton  
Ct. No.: 10A

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

**\*DISCOVERY MATTER\***

**[Filed concurrently with Stipulation  
for Protective Order]**

Complaint filed: February 22, 2016

1 This is a product liability case involving Nifedipine, an FDA-approved  
2 prescription drug. To expedite the flow of discovery material; facilitate the prompt  
3 resolution of disputes over confidentiality, and to adequately protect material entitled  
4 to be kept confidential, such as trade secrets, proprietary information, confidential  
5 research or development, medical records, and other Confidential Information and  
6 documents, plaintiffs Churee Haley and Rojelio Serrano and defendant Pfizer Inc.  
7 (“Pfizer”) have stipulated, and IT IS HEREBY ORDERED THAT the following  
8 provisions shall govern the documents, materials or other things or portions thereof  
9 (and the information contained therein) produced in discovery by any party to this  
10 litigation:

11 1. The following definitions shall apply to this Protective Order of  
12 Confidentiality (hereinafter “Order”):

13 a) “Party” shall mean a party to this action, any employee of such  
14 party, and any counsel for such party.

15 b) “Confidential Information” shall mean all documents, materials, or  
16 other things, or portions thereof (and the information contained therein) that are  
17 designated by any party with the following: “CONFIDENTIAL”, as well as all  
18 medical records produced or obtained during the course of discovery or  
19 otherwise.

20 c) Deposition testimony and deposition exhibits will be treated as  
21 “CONFIDENTIAL” for 30 days after completion of each deposition. After  
22 expiration of this 30-day period, only testimony and exhibits, or portions of  
23 exhibits, specifically identified by page and line number by a party will be  
24 deemed “CONFIDENTIAL.”

1 d) "Receiving party" shall mean any party (including the party's  
2 counsel) or any consultant or other person to whom Confidential Information is  
3 furnished.

4 e) "Disclose" shall mean to reveal, provide, describe, make known or  
5 allow to be made known to any person Confidential Information.

6 f) "Person" shall mean any natural person or any business, legal, or  
7 governmental entity or association.

8 g) "Attorney" or "counsel" includes all members, partners, and  
9 employees of the attorney or counsel or law firm of which the attorney or  
10 counsel is a member, partner or employee.

11 2. The following procedures shall apply to designated documents subject to  
12 this Order and disputes arising from such a designation:

13 a) With the exception of medical records, designation of documents  
14 as confidential shall be made by affixing to the document the following  
15 "Confidential Legend": "CONFIDENTIAL".

16 The Confidential Legend shall be affixed to each page of material to be  
17 designated, but shall not obscure any part of the text. A designation shall subject the  
18 document, and its contents, to this Order without any further action on the part of the  
19 person desiring confidentiality. The inadvertent failure to stamp a document, or  
20 portion thereof, with the Confidential Legend in no way alters or waives the protected  
21 and confidential nature of the document and does not remove it from the scope of this  
22 Order. Further, all parties agree that they will not seek to use Confidential  
23 Information containing the Confidential Legend at trial, but will permit the producing  
24 party or its counsel to substitute clean copies for use only at trial to be returned to the  
25 producing party or its counsel thereafter.

3. All confidential documents, materials, or other things, or portions thereof (and the information contained therein), shall be used only for the purposes of this case, including trial and preparation for trial, shall not be used for any other purpose, including other litigation (except as allowed by applicable rules of evidence), and shall not be disclosed to any person or governmental agency or otherwise made public except in compliance with the terms of this Order, or by determination of the Court.

1           a) Except as otherwise provided herein, Confidential Information  
2 may be disclosed by the receiving party only to:

3               (1) counsel for the parties to this action who are actually  
4 engaged in the conduct of this lawsuit;

5               (2) any witness or potential witness for the purpose of  
6 conducting an examination of such witness during a trial or deposition or  
7 for the purpose of preparing such witness for the trial examination or  
8 deposition or interviewing such witness or potential witness, subject to  
9 the conditions set forth in paragraph 4(b), *infra*;

10              (3) the Court and any employee thereof; and

11              (4) any expert retained or consulted by a party for the purpose  
12 of obtaining such expert's advice or opinion regarding any issue in this  
13 litigation, but only to the extent necessary for the expert to provide such  
14 advice or opinion and subject to the conditions set forth above.

15           b) Before disclosing Confidential Information (other than to the  
16 Court), the receiving party shall ensure that the intended recipient of such  
17 disclosure has:

18               (1) been provided a copy of this Order; and

19               (2) executed an Acknowledgment and Agreement to Be Bound in  
20 the form attached hereto as **Exhibit A**. Prior to such disclosure, the  
21 receiving party or its counsel shall prepare and maintain in a log the  
22 name, address, place of employment, and employment capacity of each  
23 such person who is to receive such information and shall maintain said  
24 log for five (5) years following termination of this action and exhaustion  
25 of all appeals relating thereto, together with a copy of the  
26 Acknowledgment and Agreement to Be Bound (in the form attached  
27 hereto as Exhibit A) executed by that person. Counsel for the receiving  
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1 party agrees to notify the receiving party, other members of counsel's  
2 firm, and counsel's firm's regular employees of this Order and such  
3 persons' obligations to abide by the terms of such Order. Nothing herein  
4 shall be deemed to restrict in any manner any party's use of its own  
5 documents or materials.

6 c) Any person to whom Confidential Information is disclosed by the  
7 receiving party or by any person who obtains such Confidential Information  
8 from the receiving party, except the Court and its personnel, shall be bound by  
9 the provisions of this Order and is subject to all appropriate sanctions and  
10 remedies for any violation hereof.

11 d) Without written permission from the producing party or a Court  
12 Order secured after appropriate notice to all interested persons, a party may not  
13 file in the public record in this action any Confidential Information. A party  
14 from whom permission is sought shall not delay or withhold permission without  
15 good cause. A party that seeks to use or refer to any Confidential Information  
16 in any pleading, motion, brief or other paper filed with the Court must comply  
17 with Civil Local Rule 79-5. Pursuant to Civil Local Rule 79-5, a sealing order  
18 will issue only upon a request establishing that the Confidential Information at  
19 issue is privileged, protectable as a trade secret, or otherwise entitled to  
20 protection under the law. If filed in the public record, such information shall be  
21 marked with the confidential legend in accordance with paragraph 1(b), *supra*,  
22 and any such document shall be filed under seal with the following legend:

23 FILED UNDER SEAL in accordance with the Protective  
24 Order entered by the United States District Court for the  
25 Central District of California, No. 8:16-cv-00546 JLS.

26 e) The receiving party will use reasonable efforts to limit the  
27 disclosure of Confidential Information to the minimum number of persons  
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1 necessary to conduct this litigation and shall avoid unnecessary photocopying  
2 of such Confidential Information. If a receiving party makes a copy of any  
3 document, material, or other thing, or portions thereof (and the information  
4 contained therein) produced by any party, said copy shall have the protective  
5 legend in accordance with paragraph 1(b), *supra*, provided that the document  
6 was designated as Confidential Information.

7 f) Notwithstanding any other provisions of this Order, no documents,  
8 materials, or other things, or portions thereof (and the information contained  
9 therein) produced pursuant to this Order shall be disclosed to someone who the  
10 party should reasonably know is an employee or consultant of any other  
11 business entity engaged in the research, development, manufacturing, or  
12 distribution of any pharmaceutical, biologic, medical device, or other FDA-  
13 regulated product, unless ordered by the Court.

14 4. Pfizer and plaintiffs each have the right to have persons, including  
15 security personnel, present in the inspection room at all times during the other party's  
16 inspection of documents, materials, or other things, or portions thereof (and the  
17 information contained therein) produced pursuant hereto. The parties shall provide  
18 reasonable advance notice of the names of all individuals who will attend such  
19 inspections. The number of persons present during this process is limited to those  
20 necessary to adequately facilitate inspection and review of documents, and any such  
21 persons must comply with the terms of this Order. The original documents, materials,  
22 or other things, or portions thereof (and the information contained therein) produced  
23 under the terms of this Order shall remain in the custody and control of the producing  
24 party at all times but may be inspected if questions arise from a review of copies of  
25 the originals.

26 5. Within 60 days after the final disposition of this case, the receiving party  
27 shall exercise reasonable best efforts to ensure that all Confidential Information and  
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1 copies of Confidential Information shall either: (1) be returned and surrendered to the  
2 producing party or person; or (2) be destroyed. Final disposition shall be taken and  
3 construed as the entry of a final, non-appealable order disposing of this case. Upon  
4 such final disposition, counsel of record for the receiving party shall notify counsel for  
5 the producing party of such return and surrender, or certify to counsel for the  
6 producing party that such Confidential Information has been destroyed. Counsel for  
7 the receiving party shall make a reasonable effort to retrieve or request any document,  
8 material, or other thing, or portions thereof (and the information contained therein) or  
9 information subject to this Order from any party or non-party witness to whom such  
10 information has been given, and shall notify in writing counsel for the producing party  
11 of the failure to retrieve any such information, the reasons therefore, and the identity  
12 of the person from whom the document, material, or other thing, or portions thereof  
13 (and the information contained therein) or information could not be retrieved. Such  
14 notification shall identify any document, material, or other thing, or portions thereof  
15 (and the information contained therein) not returned or certified destroyed.

16 6. Each Party or Non-Party that designates information or items for  
17 protection under this Order must take care to limit any such designation to specific  
18 material that qualifies under the appropriate standards. The Designating Party must  
19 designate for protection only those parts of material, documents, items, or oral or  
20 written communications that qualify – so that other portions of the material,  
21 documents, items, or communications for which protection is not warranted are not  
22 swept unjustifiably within the ambit of this order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations  
24 that are shown to be clearly unjustified or that have been made for an improper  
25 purpose (e.g., to unnecessarily encumber or retard the case development process or to  
26 impose unnecessary expenses and burdens on other parties) expose the Designating  
27 Party to sanctions. If it comes to a Designating Party's attention that information or  
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1 items that it designated for protection do not qualify for protection, that Designating  
2 Party must promptly notify all other parties that it is withdrawing the mistaken  
3 designation.

4 7. Unless otherwise ordered by the court or permitted in writing by the  
5 Designating Party, a Receiving Party may disclose any information or item designated  
6 “CONFIDENTIAL” only to:

7 a) the Receiving Party’s Outside Counsel of Record in this action, as  
8 well as employees of said Outside Counsel of Record to whom it is reasonably  
9 necessary to disclose the information for this litigation and who have signed the  
10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as  
11 Exhibit A;

12 b) the officers, directors, and employees (including House Counsel)  
13 of the Receiving Party to whom disclosure is reasonably necessary for this  
14 litigation and who have signed the “Acknowledgment to Be Bound”  
15 (Exhibit A);

16 c) Experts (as defined in this Order) of the Receiving Party to whom  
17 disclosure is reasonably necessary for this litigation and who have signed the  
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 d) the court and its personnel;

20 e) court reporters and their staff, professional jury or trial consultants,  
21 mock jurors, and Professional Vendors to whom disclosure is reasonably  
22 necessary for this litigation and who have signed the “Acknowledgment and  
23 Agreement to Be Bound” (Exhibit A);

24 f) during their depositions, witnesses in the action to whom  
25 disclosure is reasonably necessary and who have signed the “Acknowledgment  
26 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the  
27 Designating Party or ordered by the court. Pages of transcribed deposition  
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1 testimony or exhibits to depositions that reveal Protected Material must be  
2 separately bound by the court reporter and may not be disclosed to anyone  
3 except as permitted under this Stipulated Protective Order;

4 g) the author or recipient of a document containing the information or  
5 a custodian or other person who otherwise possessed or knew the information.

6 8. If a Party is served with a subpoena or a court order issued in other  
7 litigation that compels disclosure of any information or items designed in this action  
8 as "CONFIDENTIAL," that Party must:

9 a) promptly notify in writing the Designating Party. Such notification  
10 shall include a copy of the subpoena or court order;

11 b) promptly notify in writing the party who caused the subpoena or  
12 order to issue in the other litigation that some or all of the material covered by  
13 the subpoena or order is subject to this Protective Order. Such notification  
14 shall include a copy of this Stipulated Protective Order; and

15 c) cooperate with respect to all reasonable procedures sought to be  
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with  
18 the subpoena or court order shall not produce any information designated in this  
19 action as "CONFIDENTIAL" before a determination by the court from which the  
20 subpoena or order issued unless the Party has obtained the Designating Party's  
21 permission. The Designating Party shall bear the burden and expense of seeking  
22 protection in that court of its confidential material – and nothing in these provisions  
23 should be construed as authorizing or encouraging a Receiving Party in this action to  
24 disobey a lawful directive from another court.

25 9. This Order shall remain in full force and effect, and each person subject  
26 to this Order shall continue to be subject to the jurisdiction of this Court, for the  
27 purpose of enforcement of the terms of this Order, even after termination of the  
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1 lawsuit. The Court shall not be divested of the power to enforce the terms of this  
2 Order as to any persons subject to the terms of this Order by the conclusion of this  
3 case, or by the filing of a notice of appeal or other pleading that arguably has the  
4 effect of divesting this Court of jurisdiction of this matter generally.

5 10. All counsel shall at all times keep secure all notes, abstractions, or other  
6 work product derived from or containing Confidential Information, shall be obligated  
7 to maintain the confidentiality of such work product, and shall not disclose or reveal  
8 the contents of said notes, abstractions, or other work product after the documents,  
9 materials, or other things, or portions thereof (and the information contained therein)  
10 and information are returned and surrendered.

11 11. A party may assert a claim of confidentiality as to any document,  
12 material, other thing, or portions thereof (and the information contained therein) by  
13 designating it as Confidential Information. Documents, materials, or other things  
14 entitled to be kept confidential include those related to medical records, trade secrets,  
15 proprietary information, and confidential research or development. Nothing herein  
16 shall (a) prevent the producing party from disclosing any confidential document,  
17 material, or other thing, or portions thereof (and the information contained therein)  
18 that it has produced to any other person; or (b) otherwise restrict the use of such  
19 documents, materials, or other things, or portions thereof (and the information  
20 contained therein) by the producing party. Such disclosure shall not be deemed to  
21 waive or otherwise modify the protection or confidentiality provided herein.

22 12. The parties shall negotiate in good faith prior to making any motion  
23 relating to any violation or alleged violation of this Order. Any party may expressly  
24 waive in writing the applicability of any provision of this Order to any information,  
25 document, material, or other thing, or portions thereof (and the information contained  
26 therein) that any party produces. Such waiver will apply only to the information,  
27 document, material, or other thing, or portions thereof (and the information contained  
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1 therein) to which the applicability of any provision of this Order is expressly waived.  
2 A partial waiver as to certain information, document, material, or other thing, or  
3 portions thereof (and the information contained therein) does not constitute a waiver  
4 as to the remainder of such information or document, material, thing, or other thing, or  
5 portions thereof (and the information contained therein). Any motion relating to any  
6 violation or alleged violation of this Order must be made in strict compliance with  
7 Local Rules 37-1 and 37-2 (including the Joint Stipulation requirement).

8 13. Each person examining the produced materials or to whom any of the  
9 contents thereof are disseminated hereby agrees to be subject to the jurisdiction of this  
10 Court for appropriate proceedings in the event of any violation or alleged violation of  
11 this Order.

12 14. By stipulating to the entry of this Protective Order no Party waives any  
13 right it otherwise would have to object to disclosing or producing any information or  
14 item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
15 Party waives any right to object on any ground to use in evidence of any of the  
16 material covered by this Protective Order.

17 15. The parties recognize that when large volumes of documents are  
18 provided to the requesting party's counsel for preliminary inspection and designation  
19 for copying, these documents may have not yet been reviewed for confidentiality  
20 purposes, and the producing party reserves the right to designate documents after they  
21 are designated by the requesting party for copying. During the preliminary inspection  
22 process, all documents reviewed by the requesting party's counsel shall be treated as  
23 Confidential Documents.

24 16. Pursuant to Federal Rule of Evidence 502(d), disclosure of information  
25 protected by the attorney-client privilege, work product doctrine, or other applicable  
26 privilege or protection in this litigation (collectively, "privileged information") shall  
27 not constitute a waiver of any valid claim of privilege, and failure to assert a privilege  
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1 in this litigation as to one document or communication shall not be deemed to  
2 constitute a waiver of the privilege as to any other document or communication  
3 allegedly so protected, even involving the same subject matter.

4 17. If a party discovers that it has produced privileged information, that party  
5 may give notice to the receiving party and request its return. Upon agreement, the  
6 privileged document, together with all copies thereof and any notes made therefrom,  
7 shall be returned within 15 days to the party, and the receiving party shall not use such  
8 information for any purpose.

9 18. When a producing party gives notice to a receiving party that certain  
10 inadvertently produced material is subject to a claim of privilege or other protection,  
11 the obligations of the receiving party are those set forth in Federal Rule of Civil  
12 Procedure 26(b)(5)(B). If a receiving party discovers an apparent inadvertent  
13 disclosure of privileged information by a producing party, a receiving party shall take  
14 reasonable steps to notify the producing party that privileged information has been  
15 produced and, upon agreement, shall return the privileged document, together with all  
16 copies thereof and any notes made therefrom, within 15 days. Thereafter, the  
17 receiving party shall not use such information for any purpose.

18 19. Counsel for the receiving party shall make a good-faith effort to ensure  
19 compliance with the provisions of this Order. In the event of new counsel and/or a  
20 change in counsel, the parties and/or retiring counsel shall fully instruct new counsel  
21 of its responsibilities under this Order.

1           20. The parties hereto stipulate and consent to the issuance of this Order as  
2 an Order of this Court.

3  
4           **IT IS SO ORDERED.**

5  
6 Dated: 9/26/16



Hon. Charles F. Eick  
United States Magistrate Judge



**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court of the Central District of California on \_\_\_\_  
\_\_\_\_\_ [date] in the case of *Churee Haley, et al. v. Bayer Healthcare et al.*, Case  
No. 8:16-cv-00546 JLS (E). I agree to comply with and to be bound by all the terms  
of this Stipulated Protective Order, and I understand and acknowledge that failure to  
so comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is  
subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the California Superior Court for  
the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full  
name] of \_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_